

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

KAREN LESLIE CULLEN, Executrix and
Personal Representative of the Estate of
Henry John Cullen, III, Deceased,

Plaintiff,
v.

Case No.: CL19-4105-8

THE COMMONWEALTH OF VIRGINIA,

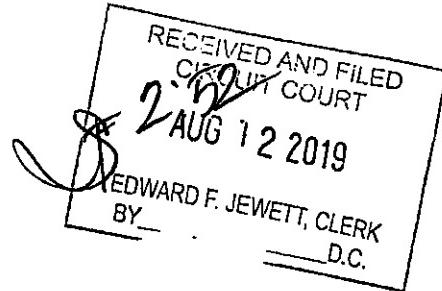
**SECRETARIAT OF PUBLIC SAFETY AND
HOMELAND SECURITY,**

and

THE VIRGINIA STATE POLICE

Defendants.

COMPLAINT



Plaintiff, Karen Leslie Cullen, Executrix and Personal Representative of the Estate of Henry John Cullen, III, Deceased ("Plaintiff"), by counsel, moves for judgment against Defendants Commonwealth of Virginia, Secretariat of Public Safety and Homeland Security, and The Virginia State Police, pursuant to Virginia law and Va. Code Ann. 8.01-50 et seq., on the grounds and in the amounts set forth below:

The Parties

1. This Wrongful Death and Survival Civil Action against the Commonwealth of Virginia ("Commonwealth"), Secretariat of Public Safety and Homeland Security ("PSHS"), and The Virginia State Police ("VSP") is brought by Executrix and Personal Representative of the

Estate of Henry John Cullen, III, Deceased arising out of the crash of a Virginia State Police Bell 407 helicopter on August 12, 2017 in Charlottesville, Virginia.

2. Defendant, Commonwealth of Virginia is a body politic organized and existing under the Constitution of that State with its capital located in Richmond, Virginia and employs individuals in the capacity State Police who maintain and repair state vehicles including the helicopter that is subject of this lawsuit, and was responsible for following and complying with all necessary or appropriate service bulletins or airworthiness directives for the helicopter at issue.

3. Defendant, PSHS, is an Agency of the Commonwealth responsible for public safety, including oversight of the Virginia State Police, which maintained and repaired state vehicles including the helicopter that is subject of this lawsuit, and was responsible for following and complying with all necessary or appropriate service bulletins or airworthiness directives for the helicopter at issue.

4. Defendant, VSP, is an Agency of the Commonwealth under the PSHS, that maintained and repaired state vehicles including the helicopter that is subject of this lawsuit, and was responsible for following and complying with all necessary or appropriate service bulletins or airworthiness directives for the helicopter at issue.

5. Plaintiff, Karen Cullen, is the proper party to bring this lawsuit for Wrongful Death and Survival as she is the Executrix of the Estate of her late husband, Henry John (Jay) Cullen, III, and the Mother of their children, Ryan Cullen, age 19, and Matthew Cullen, age 17.

Background of This Lawsuit

6. The Bell 407 helicopter is a single engine helicopter designed and manufactured by Bell Helicopter Textron, Inc. ("Bell"), Bell Helicopter Textron Canada ("Bell") and is powered by

the Rolls Royce Allison 250 engine designed and manufactured by the Rolls Royce Corporation (“Rolls Royce”) and Rolls Royce North American, Inc. (“Rolls Royce”), which is equipped with a FADEC fuel control manufactured by Triumph Group (“Triumph”).

7. The accident helicopter, serial number 53465, was manufactured in 2001.

8. The aircraft had an FAA registration number of N31VA and was owned and operated by the Commonwealth of Virginia State Police Aviation Unit at the time of the crash.

9. The accident helicopter, owned by the Commonwealth of Virginia, became what is known as a Public Use Aircraft, which means it is not subject to all the Rules, Regulations and Prohibitions of the FAA or the NTSB.

10. From the outset, the Bell 407 demonstrated itself to be a maintenance nightmare with many Service Bulletins and Airworthiness Directives mandating that certain inspections and maintenance be performed to keep it flying (airworthy).

11. The engine and fuel control, known as a FADEC, had many operational difficulties the principal one being that fuel control malfunctions could, without any prior warning, cause the engine to enter a fixed fuel flow insufficient for the engine to power the helicopter, and over which the flight crew had little to no control.

12. This anomaly called “fixed fail” was addressed in part by a change in the design of the fuel control in 1998 which resulted in a reversionary governor introduction which was supposed to prevent loss of power by fixed fail by transferring fuel control to the reversionary governor.

13. The new fuel control was a Triumph predecessor design, Goodrich Pump & Engine Control Systems, Inc., with respect to which Triumph purchased the product line, approved, tested

and implemented by Rolls Royce, and approved and endorsed by Bell, and is responsible for the FADEC installed in the helicopter engine.

14. The problem with the Rolls/Triumph/Bell modification was that while it was represented to be a reversionary governor, the reversionary governor was incapable of assuring adequate fuel flow to the engine in the event of a malfunction of the primary governor.

15. The Bell 407 also suffers from repetitive inspections and maintenance of its tail rotor drive shaft which is a long boom-like appendage to the transmission, and which is a vital element of helicopter control.

16. The tail rotor drive shaft contains a number of isolation pads, interim bearings and other components which have proved troublesome and the failure of which can cause loss of aircraft control.

17. The Bell 407 also suffers from many flight control malfunctions which implicate many of the elements of the helicopter that require constant inspection, disassembly and maintenance each and every time risking a maintenance induced failure because of its frequent disassembly.

18. The tail boom of the helicopter consisting of a large airframe structure has proved so inadequately designed that it cracks, breaks and binds the tail rotor drive shaft causing sudden loss of control.

19. On August 12, 2017, State Trooper Cullen and Trooper Berke Morgan Matthew Bates were performing their official duties observing the ultra-nationalist demonstrations in Charlottesville, Virginia.

20. As they hovered in position to ensure the safety of the Governor of Virginia's motorcade, the helicopter was seen to pitch up and down suddenly, and as they attempted to regain control, the helicopter crashed into the ground and burst into flames.

21. Both Henry John Cullen III and Berke Morgan Bates perished in the conflagration that enveloped the helicopter primarily due to the lack of proper maintenance and repair of the helicopter by agents and/or employees of the Virginia State Police, PSHS and/or Commonwealth of Virginia, and their failure to comply with all necessary or appropriate service bulletins or airworthiness directives, such as the ones described above.

22. At all relevant times, the agents and/or employees of the Virginia State Police, PSHS and/or Commonwealth of Virginia who were responsible for the maintenance and repair, and to ensure compliance with all necessary or appropriate service bulletins or airworthiness directives, were acting within the scope of their employment with Virginia State Police, PSHS and/or Commonwealth of Virginia.

The Damages Claimed

23. Virginia State Police Trooper Lieutenant Henry John (Jay) Cullen, III, was 48 years old at the time of his death, an airline transport pilot, rated helicopter pilot, husband of Karen Leslie Cullen, age 50, and the father of two sons, Ryan, age 19, and Mathew, age 16.

24. Plaintiff and the statutory beneficiaries claim all damages allowed under Virginia law.

25. Lt. Cullen was a career Virginia State Trooper with an exemplary record, and was in excellent health prior to the crash.

26. Plaintiff's decedent, Henry John Cullen, III, died as a result of injuries from the August 12, 2017 helicopter crash and is survived by the following statutory beneficiaries: Karen Leslie Cullen, Ryan Cullen, and Matthew Cullen.

27. The statutory beneficiaries all have lost Lt. Cullen's bounty, his care, comfort, companionship, and likely support during their lives and are suffering unrelenting grief from his loss, the thought of pain and suffering he experienced during his last moments here on earth and all of whom were dependent upon him for their care, comfort, guidance, affection, solicitude, support and tutelage.

28. Lt. Cullen's fear of impending death is unspeakable as every pilot knows that loss of control and power in a helicopter at low altitude in a hover is a doomsday sentence such that no matter what step, was or could be taken to save themselves, it was an exercise in futility, and that death was a certainty by hideous mutilation.

29. These statutory beneficiaries have sustained financial and pecuniary loss as a result of the death of Plaintiff's decedent, Henry John Cullen, III, and have suffered severe mental anguish at the loss of his company and counsel. Plaintiff claims damages against Defendants, jointly and severally, in the amount of FIFTY MILLION DOLLARS (\$50,000,000.00), plus pre-judgment interest from August 12, 2017, on behalf of decedent Henry John Cullen, III's beneficiaries for all damages allowed under Va. Code § 8.01-52 which include, but are not limited to, medical, hospital, and other expenses for the care, treatment, and hospitalization of the decedent incident to the injuries which caused his death; funeral and burial expenses of decedent; any pecuniary and loss in income of the decedent suffered by the statutory beneficiaries; sorrow, mental anguish, solace, loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent suffered by the beneficiaries; compensation for the

reasonably expected loss of income of the decedent; the reasonable value of the loss of the services, protection, care, and assistance provided by the decedent; loss of decedent's company; loss of counsel suffered by statutory beneficiaries; and any other damages as may be appropriate under Va. Code Ann. § 8.01-52 and allowed under Virginia law in any way, including costs.

Jurisdiction and Venue

30. This Court has *in personam* jurisdiction over the Commonwealth of Virginia, PSHS and VSP.

31. Venue is proper in that the capital of the Commonwealth of Virginia is Richmond.

COUNT I – NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL AND WANTON NEGLIGENCE

32. Plaintiff incorporates by reference paragraphs 1 through 31.

33. The Virginia State Police, PSHS and/or Commonwealth of Virginia owed duties to Plaintiff/Plaintiff's decedent to properly maintain and repair the helicopter at issue, and to ensure compliance with all necessary or appropriate service bulletins or airworthiness directives.

34. The Virginia State Police, PSHS and/or Commonwealth of Virginia were negligent, grossly negligent, and willful and wantonly negligent in the following breaches of its duties of care:

a. Failing to follow and implement airworthiness instructions for the Bell 407 and the Rolls/Allison 250 engine.

b. Failing to follow and implement the Maintenance Manuals and Checklists to provide for adequate inspection, removal and replacement of critical components.

- c. Failing to properly repair and maintain the helicopter at issue.
- d. Failing to properly test and evaluate the helicopter at issue to determine its airworthiness.
- e. Failing to follow and implement maintenance instructions for the tail rotor drive shaft, tail boom engine controls and other helicopter control components.
- f. Failing to provide for adequate inspections of the helicopter control systems including but not limited to engine, airframe, tail rotor and tail rotor drive shaft and tail boom assembly.
- g. Failing to follow and implement Service Instructions, Bulletins, Alerts and/or Airworthiness Directives to counter well-known losses of control, and structural failure of critical airframe and control system components.
- h. Failing to issue adequate instructions for flight crews to cope with emergencies.
- i. Failing to properly and adequately assess the risk to operators and pilots of critical component failure and taking all steps to prevent it.
- j. Assuming for pilots, aircraft owners and operators the risk of certain death as a consequence of failing to take required precautions to catastrophic failure.

35. The actions described above constitute gross negligence in that the actions of he Virginia State Police, PSHS and/or Commonwealth of Virginia shows such indifference to others as to constitute a complete neglect of safety of another person, including Plaintiff's decedent.

36. The actions described above constitute willful and wanton negligence in that the actions of the Virginia State Police, PSHS and/or Commonwealth of Virginia show a conscious disregard of another person's rights and they acted with a reckless indifference to the

consequences to another person when they were aware of their conduct and also aware that such conduct would probably result in injury to another, including Plaintiff's decedent.

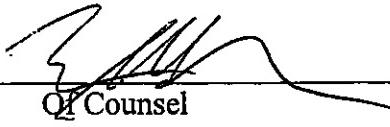
37. As a direct result of the negligence, gross negligence, negligence per se, and willful and wanton negligence of these defendants, the Virginia State Police helicopter in public service was caused to crash in a fireball causing the death of Plaintiff's decedent, where the experienced flight crew were entirely free of any conceivable contributory negligence or contribution to the accident whatsoever and the negligence was a proximate cause of the damages set out in paragraph 29 which is incorporated herein by reference.

WHEREFORE, as a result of the negligence, gross negligence, negligence per se, and willful and wanton negligence of one or more of the defendants, which were a proximate cause of the death of the decedent, the Plaintiff and all statutory beneficiaries demand judgment against defendants, jointly and severally, in the amount of FIFTY MILLION DOLLARS (\$50,000,000.00) as compensatory damages and THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000.00) in punitive damages, plus interest from August 12, 2017, post judgment interest, costs, and any other costs or damages allowed under law.

PLAINTIFF DEMANDS TRIAL BY JURY

KAREN LESLIE CULLEN, Executrix and
Personal Representative of the Estate of Henry John
Cullen, III, Deceased

By:


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